

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
December 6, 2000 Session

**RICHARD FAWCETT, NATURAL FATHER AND CUSTODIAL PARENT OF
DANIELLE LYNN FAWCETT, DECEASED v. JARROD C. ADREON, ET AL.**

**An Appeal from the Circuit Court for Williamson County
No. 95558 Russ Heldman, Judge**

No. M2000-00940-COA-R3-CV - Filed August 21, 2001

This is a wrongful death case involving a police chase. A teenage passenger in a car was killed in an accident after a police officer chased the vehicle into a construction zone. The teenager's father sued the driver of the car and the city, alleging negligence. The city moved for summary judgment. The trial court granted the motion, finding that there was no dispute that the teenager was not an "innocent third party," and that this fact precluded the city from any liability for the result of the police chase. On appeal, we affirm the trial court's decision, holding that, under the circumstances in this case, under Tennessee Code Annotated § 55-8-108(e), a passenger in a vehicle that is fleeing from a law enforcement officer would be deemed a "suspected violator of the law" rather than a "third party" to whom the law enforcement officer owed a duty of care.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

HOLLY KIRBY LILLARD, J., delivered the opinion of the court, in which ALAN E. HIGHERS, J., and DAVID R. FARMER, J., joined.

Culwell E. Ward, Nashville, Tennessee, for the appellant, Richard Fawcett.

J. Russell Farrar, William N. Bates, Nashville, Tennessee, for the appellee, City of Franklin, Tennessee.

OPINION

This is a wrongful death case involving a police chase that ended tragically. In this case, Richard Fawcett sued Jarrod C. Adreon ("Adreon") and the City of Franklin, Tennessee, for negligence resulting in the wrongful death of his teenage daughter, Danielle Lynn Fawcett ("Fawcett").

The pertinent facts are undisputed. On November 11, 1994, Fawcett attended a party in Nashville, along with Adreon, Dallas Chad Beard ("Beard"), and others. Fawcett and Adreon were

both observed drinking alcohol at the party. At some point after midnight on November 12, Adreon, Fawcett, and Beard left the party, and began driving to Franklin. Beard drove his own car, and Adreon and Fawcett followed in Fawcett's car. Fawcett was severely intoxicated, so Adreon drove Fawcett's car. Beard and Adreon, with Fawcett in the car with Adreon, drove south on Interstate 65, headed toward Highway 96 in Franklin.

Stephen Sullivan, an officer with the Franklin Police Department, was sitting in his police car at the Kentucky Fried Chicken on Highway 96, just off Interstate 65, when he heard a description on his two-way radio of two cars racing on Interstate 65. Soon after, Officer Sullivan saw two cars exiting Interstate 65 and traveling west on Highway 96. Officer Sullivan heard loud acceleration noises coming from the cars' engines. He then pulled out of the Kentucky Fried Chicken parking lot and began to pace the cars traveling west on Highway 96. He testified that, in the second car, he noticed a male driver and a female passenger talking to each other once he began to follow them. Officer Sullivan paced the cars traveling at 79 miles per hour on Highway 96, where the posted speed limit is 40 miles per hour.¹ Officer Sullivan then illuminated his blue lights. When Officer Sullivan illuminated his blue lights, Adreon accelerated and attempted to get away. Adreon testified as to his state of mind when Officer Sullivan attempted to pull him over:

I panicked. Just – I wanted to get away. . . . Well, my passenger was drunk, smelled like alcohol in the car. She had previously gotten in trouble with her father anyways and she was already late getting home. It was a brand new car that she had just gotten. We were both in trouble.

Adreon testified that, at the time Officer Sullivan turned on his blue lights, Fawcett was asleep in the passenger seat.² Adreon acknowledged that he went fast, but did not look at his speedometer. Adreon turned left on Mack Hatcher Parkway and continued speeding. Adreon said that Officer Sullivan was immediately behind him once he turned onto Mack Hatcher Parkway. Adreon then entered a construction zone, and Officer Sullivan backed off somewhat. Around this time, Adreon testified, Fawcett woke up and began screaming for him to stop. Rattled by this, Adreon misread the lanes in the construction zone and started to travel on the left hand side of the road, when he should have been more toward the right. He then overcorrected, and the car went off the right hand side of the road and flipped over. Adreon was thrown from the vehicle and suffered minor injuries. Fawcett received injuries that resulted in her death. Investigation of the accident revealed that Fawcett had a blood alcohol level of 0.18, and Adreon had a blood alcohol level of 0.04. Adreon was later convicted of criminally negligent homicide.

Fawcett's father, Richard Fawcett, sued Adreon and the City of Franklin for negligence resulting in her wrongful death. The City moved for summary judgment. The trial court granted

¹ Adreon testified that he was traveling at about 45 miles per hour on Highway 96. He admits, however, that he sped up once Officer Sullivan illuminated his blue lights.

² This contradicts Officer Sullivan's testimony that he noticed Adreon and Fawcett talking to each other when he began to follow them.

summary judgment to the City on the grounds that there was no disputing the fact that Fawcett was not an “innocent third party,” and that this precluded Mr. Fawcett from suing the city for negligence. From this order, Mr. Fawcett now appeals.

On appeal, Mr. Fawcett argues that he does not have to prove the “innocence” of his daughter in order to hold the City liable for her death, citing *Haynes v. Hamilton Co.*, 883 S.W.2d 606, 609 (Tenn. 1994). Rather, Mr. Fawcett argues, Tennessee Code Annotated 55-8-108(d) imposes a duty on law enforcement personnel to drive with due regard for the safety of all third parties. Since his daughter was a passenger in the fleeing car, Mr. Fawcett contends that she was a third party to whom the City owed a duty of care. If so, under Tennessee Code Annotated § 55-8-108(e), the City can be held liable if its negligence was a proximate cause of her death.

In this case, the essential facts are undisputed. Since only questions of law are involved, we review the trial court’s grant of summary judgment *de novo*, with no presumption of correctness. *See Warren v. Estate of Kirk*, 954 S.W.2d 722, 723 (Tenn. 1997).

A governmental entity such as the City of Franklin is normally immune from suit under the doctrine of sovereign immunity. *See Williams v. Memphis Light, Gas and Water Division*, 773 S.W.2d 522, 523 (Tenn. Ct. App. 1988). This immunity is removed by statute in limited circumstances. Such a removal of governmental immunity is set forth in Tennessee Code Annotated § 29-20-202(a), which permits a tort action against a governmental entity such as the City for the negligence of its employee while operating a motor vehicle in the scope of his or her employment. *See* Tenn. Code Ann. § 29-20-202(a) (2000); *Haynes*, 883 S.W.2d at 609. However, an exception to this is contained in Tennessee Code Annotated § 55-8-108, which permits law enforcement and emergency personnel to disregard certain rules of the road in limited circumstances. *See* Tenn. Code Ann. §§ 55-8-108(a), 55-8-108(b) (1998). Sections 55-8-108(d) and (e) state:

(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of the driver’s own reckless disregard for the safety of others.

(e) Notwithstanding the requirement of this section that drivers of authorized emergency vehicles exercise due regard for the safety of all persons, no municipality or county nor the state or any of its political subdivisions, nor their officers or employees, shall be liable for any injury proximately or indirectly caused to an actual or suspected violator of a law or ordinance who is fleeing pursuit by law enforcement personnel. The fact that law enforcement personnel pursue an actual or suspected violator of a law or ordinance who flees from such pursuit shall not render the law enforcement personnel, or the employers of such personnel, liable for injuries to a third party proximately caused by the fleeing party unless the conduct of the law enforcement personnel was negligent and such negligence was a proximate cause of the injuries to the third party.

Tenn. Code Ann. §§ 55-8-108(d) and (e) (1998). Thus, under section 55-8-108(e), a municipality cannot be held liable for an injury to “an actual or suspected violator of a law or ordinance who is fleeing pursuit by law enforcement personnel.” Tenn. Code Ann. § 55-8-108(e). However, a municipality can be held liable for injuries to a third party occurring during a police chase if “the conduct of the law enforcement personnel was negligent and such negligence was a proximate cause of the injuries to the third party.” *Id.*

In support of his argument, Mr. Fawcett cites *Haynes v. Hamilton County*, 883 S.W.2d 606 (Tenn. 1994). In *Haynes*, police engaged in a high speed chase of a traffic violator. The police officer chasing the violator slowed down in heavy traffic, but the violator did not. The traffic violator’s car crossed the center line and collided with a vehicle, killing the three teenage occupants. *Id.* at 608. The Court in *Haynes* held, *inter alia*, that the term “conduct” as used in Tennessee Code Annotated § 55-8-108(e) would encompass the police officer’s decision to commence or continue a high speed chase, as well as the officer’s operation of his law enforcement vehicle. *Id.* at 610-11. The *Haynes* Court stated:

Accordingly, we conclude that an officer’s decision to commence or continue a high-speed chase is encompassed within the statutory term “conduct” and may form the basis of liability in an action brought by a third party who is injured by the fleeing suspect, if the officer’s decision was unreasonable. In determining whether the decision to initiate or continue pursuit is reasonable, the risk of injury to innocent third parties should be weighed against the interest in apprehending suspects.

Id. at 611. In discussing the analysis under the statute, as in the quotes above, the *Haynes* Court on occasion uses the term “innocent third party.” *Id.* at 611, 612, and 613. However, the statute refers simply to a “third party,” and we must conclude that the use of the adjective “innocent” in *Haynes* is descriptive and not intended as a requirement.

Since the injured parties in *Haynes* were the occupants of a vehicle not involved in the high speed pursuit, *Haynes* does not address the central issue in this case, namely, whether the passenger in a vehicle involved in a high speed police chase is a “third party” under Section 55-8-108(e). The parties have not cited to this Court a reported decision which directly addresses this issue, nor has our research located such a case. The language of the statute does not indicate whether a passenger in a fleeing vehicle would be considered a “suspected violator” or a “third party.”

The *Haynes* Court noted that “police officers have a duty to apprehend law violators and . . . the decision to commence or continue pursuit of a fleeing suspect is, by necessity, made rapidly.” *Haynes*, 883 S.W.2d at 611. The split-second decision of whether to chase a fleeing vehicle must at times be made with little or no information about the driver or the passenger. Under the analysis urged by Mr. Fawcett, law enforcement personnel would be constrained against chasing any fleeing vehicle with a passenger, unless the law enforcement officer had affirmative information indicating that the passenger had violated a law. Such a requirement unreasonably hamstrings law enforcement personnel in the performance of their overall obligation “to protect the public.” *Haynes*, 883 S.W.2d

at 611. In addition, it must be noted that Section 55-8-108(e) does not use the term “driver” of a fleeing vehicle; rather, the statute refers to “an actual or suspected violator of a law or ordinance who flees. . . .”

We hold that, in the absence of information to the contrary, a police officer can reasonably assume that the passenger in the fleeing vehicle is engaged in a common criminal activity with the driver and would therefore be a suspected violator of the law under Section 55-8-108(e). If the passenger in a fleeing vehicle is a “suspected violator” and not a “third party,” a municipality cannot be held liable for an injury to such a passenger resulting from a high speed police chase. In this case, while there is some dispute as to whether Fawcett was awake during the chase, there were no facts that would have made it unreasonable for the police officer to assume Fawcett was engaged in a common criminal activity with the driver, Adreon. Under these circumstances, we conclude that Fawcett must be deemed a “suspected violator” under the statute, and the City cannot be held liable for her death, even if the police officer’s decision to commence or continue the chase was negligent.³ The trial court’s decision granting summary judgment to the City is affirmed on this basis.

The decision of the trial court is affirmed. Costs on appeal are taxed to the Appellant, Richard Fawcett, Natural Father and Custodial Parent of Danielle Lynn Fawcett, Deceased, and his surety, for which execution may issue if necessary.

HOLLY KIRBY LILLARD, JUDGE

³We not address whether a passenger in a fleeing vehicle would be deemed a “third party” under circumstances in which the law enforcement officer had information indicating, for example, that the passenger was a hostage or otherwise was an unwilling passenger or participant in the driver’s activities.